

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
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January 24, 2005

Clair R. Gerry, Esq.
P.O. Box 966
Sioux Falls, South Dakota 57101-0966

Crystal J. Carlson
Carlson Property Management, Inc.
P.O. Box 89503
Sioux Falls, South Dakota 57109

Subject: ***In re David A. Hubbard***
Chapter 7; Bankr. No. 04-41055

Dear Mr. Gerry and Ms. Carlson:

The matter before the Court is the Motion for Order Directing Clerk of Courts to Discharge Judgments Discharged in Bankruptcy filed by Debtor on January 10, 2005. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and subsequent order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014. As set forth below, Debtor's motion will be granted in part and denied in part.¹

Summary. On August 10, 2004, Carlson Property Management ("Carlson") obtained a judgment against David Hubbard in state court for \$1,039.50 plus costs. On August 13, 2004, David A. Hubbard ("Debtor") filed for relief under chapter 7 of the bankruptcy code.

Debtor listed Carlson on his mailing list of creditors and on his schedule of creditors holding unsecured nonpriority claims.² Debtor listed Popular Financial Services LLC ("Popular") "C/O Glenn Boomsma" on his mailing list of creditors and on his schedule of creditors holding secured claims.

On August 15, 2004, the Bankruptcy Clerk served notice of

¹ The relevant facts are not in dispute. The issue presented is purely a question of law. Thus, no hearing was held.

² Debtor filed his petition, schedules, and statements electronically. He "uploaded" his mailing list of creditors at the same time.

commencement of the case on Debtor's creditors, including Carlson. The Bankruptcy Clerk mailed Popular's copy to the address provided by Debtor, i.e., "C/O Glenn Boomsma[,] 606 East Tan Tara Circle[,] Sioux Falls, SD 57104." The notice of commencement of case clearly stated that the deadline for filing a complaint objecting to Debtor's discharge or to determine the dischargeability of a particular debt was November 12, 2004.

Popular did not request relief from the automatic stay. Nevertheless, on August 26, 2004, it obtained a judgment against Debtor in state court for \$183,375.86.³

None of Debtor's creditors filed a complaint objecting to Debtor's discharge or to determine the dischargeability of a particular debt. Debtor was therefore granted a discharge under § 727 of the bankruptcy code on November 15, 2004.

On January 10, 2005, Debtor filed a Motion for Order Directing Clerk of Courts to Discharge Judgments Discharged in Bankruptcy. Debtor listed both Carlson's and Popular's judgments in his motion. Debtor served his motion on Popular "C/o Glenn Boomsma." On January 13, 2005, Carlson filed an objection to Debtor's motion, in which it outlined the facts and circumstances giving rise to its claim against Debtor and asked the Court not to discharge its judgment.⁴

Discussion. Section 524(a)(1) of the bankruptcy code provides:

(a) A discharge in a case under this title -

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived[.]

³ Debtor has not asked that this judgment be voided as an act in violation of the automatic stay. See 11 U.S.C. § 362(a)(1).

⁴ By letter dated January 13, 2005, the Court advised Carlson that it would need to be represented by counsel at any hearing on Debtor's motion.

Re: *Hubbard*
January 24, 2005
Page 3

Section 524(a)(1) does not require the debtor to do anything to void a judgment. The discharge automatically voids any judgment that represents a determination of the debtor's personal liability for a debt that has been discharged.

Section 15-16-20 of the South Dakota code establishes the procedure for removing such a judgment from the records of the clerk of court for the county in which it was docketed. When a debtor receives a bankruptcy discharge, she may file a motion in the bankruptcy court for an order listing each state court judgment that has been voided. Upon receipt of the bankruptcy court's order, the clerk of court for the county in which the judgment was docketed must enter it in the judgment docket. This has the effect of discharging the listed judgments from and after that date.

In this case, nothing in the record suggests that Carlson did not receive formal notice of Debtor's bankruptcy. Carlson did not timely object to Debtor's discharge or to the dischargeability of its claim. Its claim was therefore discharged on November 15, 2004. Debtor is thus entitled to the relief requested in his motion with respect to both Carlson's judgment.

However, Debtor is not entitled to the relief requested in his motion with respect to Popular's judgment. Federal Rule of Bankruptcy Procedure 1007(a)(1) requires that a debtor's mailing list of creditors include the "name and address of each creditor." Similarly, Federal Rule of Bankruptcy Procedure 1007(b)(1) requires that a debtor's schedules of assets and liabilities conform to the appropriate Official Forms. Official Forms B6D (Schedule D - Creditors Holding Secured Claims), B6E (Schedule E - Creditors Holding Unsecured Priority Claims), and B6F (Schedule F - Creditors Holding Unsecured Nonpriority Claims) instruct the debtor to provide each "creditor's name, mailing address, including zip code, and account number."

Nothing in either Rule 1007(a)(1) or the Official Forms suggests that a creditor may be scheduled "in care of" an attorney who represented the creditor in the past. This Court therefore agrees with those courts that have held that a creditor must be scheduled at its own address, not that of an attorney who represented the creditor in the past.

[P]roper scheduling of a creditor requires listing the creditor at its own address or at least that of an agent designated for service of process. The Court is mindful that an appropriate address for service on a creditor may change throughout the course of a case by virtue of a notice of appearance filed pursuant to

Fed.R.Bankr.P. 2002(g) or by the filing of a proof of claim with a different address, but the initial scheduling which occurs before a creditor or its attorney has made an appearance in the case should be the creditor's own address if it has one.

Carpet Services, Inc. v. Hutchison (In re Hutchison), 187 B.R. 533, 535 (Bankr. S.D. Tex. 1995) (citing cases).

[O]ne cannot serve initial process on an attorney for a party unless the attorney agrees to accept service after authorization from the party. Moreover, it doesn't necessarily follow that because an attorney has represented a client in one case, they will automatically be representing the client in subsequent cases regarding the same issues. It follows that the only safe way to ensure proper service of notices is to serve the creditor directly.

Midatlantic National Bank v. Kouterick (In re Kouterick), 161 B.R. 755, 759 (Bankr. D.N.J. 1993).⁵

In this case, because Debtor did not properly list Popular on his mailing list of creditors, Popular did not receive formal notice of Debtor's bankruptcy filing. As a result, Popular's claim may not have been discharged. See 11 U.S.C. § 523(a)(3). The only way that can be determined is through an appropriate adversary proceeding to determine dischargeability. See Fed.R.Bankr.P. 7001(6). Since no such determination has been made, it would be premature to grant Debtor the relief he has requested with respect to Popular's judgment.

Accordingly, Debtor's motion will be granted in part and denied in part. The Court will enter an appropriate order.

Sincerely,
/s/ Irvin N. Hoyt
Irvin N. Hoyt
Bankruptcy Judge

INH:sh
cc: case file (docket original; serve parties in interest)

⁵ That is not to say that an attorney who represented a creditor in the past should not be listed.

[I]t is certainly a desirable courtesy to list an attorney who is known to have represented a creditor in pre-petition matters regarding the debt in question, in addition to scheduling the creditor separately.

Kouterick, 161 B.R. at 759. However, listing the attorney is only a courtesy. Listing the creditor - at the creditor's own address - is a requirement.